IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2457 OF 2005

Aisan Nicholas Baptista. ..Petitioner.

V/s.

M.Fernandes & Anr. ..Respondents.

Mr.Sudeep Pashola for petitioner.

Ms.S.V.Gajare, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 14, 2005.

P.C. :

1. Heard counsel for the parties.

2. This petition takes exception to the order passed by the Principal Secretary dated 19th May, 2005 which confirms the externment order passed against the petitioner by the Deputy Commissioner of Police, Bhandup Division, Bombay dated 13th January, 2005.

3. Action under section 56 of the Bombay Police Act was initiated by the Externing Authority on the basis of show cause notice dated 22nd September, 2004. The show cause notice refers to Criminal cases registered against the petitioner which are prior to

1991. Reference is made to two in-camera statements recorded recently by the Authorities in September, 2004. Then reference is made to the fact that the petitioner has not changed his behaviour inspite of the proceedings taken out against him under Section 110 of Cr.P.C.,in which he executed bond of good behaviour on 22nd March, 1996. Reference is also made to action taken against the petitioner under section 151(3) Cr.P.C. on three different occasions dated 16th April, 1996, 17th February, 1997 and 9th February, 1998. It is then mentioned in the show cause notice that in view of impending election and Ganesh Festival which was soon approaching, to obviate offending activities of the petitioner, it has become imperative to proceed against the petitioner under Section 56(1)(a) and (b) of the Bombay Police Act.

4. The petitioner filed his reply to the said show-cause notice. After considering material on record, the Externing Authority proceeded to pass order on 13th January, 2005, ordering externment of the petitioner for the period of two years from the District of Bombay, Pune, New Bombay and Bombay Suburban. Against this decision, petitioner carried the matter in appeal before the State Government,

which appeal has been dismissed by the Principal Secretary by the impugned order dated 9th May, 2005.

5. It is not necessary to burden this Judgment with all the contentions raised in the present petition. Suffice it to observe that the subjective satisfaction arrived at by the Externing Authority in my opinion is vitiated on account of the fact that the same is founded on extraneous consideration. Section 56(1)(b) is applicable when there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code.

6. In the present case, offences which are reckoned by the Externing Authority and referred to in the Show Cause notice were registered prior to 1991 and action was ignited in the year 2004. In any case, it was not open to take into account the fact that proceedings under section 110 of the Code of Criminal Procedure was initiated against the petitioner sometime in March, 1996 or for that matter action under section 151(3) of Cr.P.C. was resorted to against the petitioner in April, 1996, February,

1997 and February, 1998. Those proceedings have no causal connection with the action under section 56 of the Bombay Police Act. Section 56(1) adverts only to offences so far as under Chapter XII, XVI or XVII of the Indian Penal Code. Besides, the Externing authority has taken into account that externment of petitioner was necessary in view of impending election and Ganesh Festival.

7. As mentioned earlier, action against the petitioner under section 56 of the Bombay Police Act is founded on extraneous consideration. As referred to above, it is not possible for this court to countenence the abovesaid grounds which have weighed with the Authorities. It is not open to this court to enquire as to whether the said extraneous consideration weighed with the externing authority overwhelmingly or otherwise to maintain the externment order in question. The order therefore, will have to be set aside, as a whole. In the circumstances, this petition would succeed and the impugned order passed by the Externing Authority as confirmed by the Appellate Authority will have to be set aside. Ordered accordingly.

8. Rule made absolute in the above terms.